

Condemnation Actions to Acquire Property for Highway Rights-of-Way

UDOT 08A3-1

Effective: November 9, 1967

Revised: March 5, 1996

Purpose

To place responsibility for initiation of condemnation action and the preparation of condemnation instruments, maps, exhibits, etc., for the acquisition of rights-of-ways for highway purposes in compliance with the laws of the State of Utah relating to the rights of Eminent Domain; to establish a correspondent procedure for dismissing a condemnation action.

Policy

Under the laws of the State of Utah, the Utah Department of Transportation has the Right of Eminent Domain. It is the policy of the department to use this power only when no other solution is available to acquire right-of-way at the estimated fair market value, which is the approved appraisal figure, and in reasonable time. When condemnation does become necessary, every care will be taken to protect the rights of the property owner and the public.

No property will be condemned until all reasonable effort to settle by contract has been exhausted -- then only after the Department has determined that the taking is necessary to maintain design and right of way standards. Maps, deeds, documents, exhibits, etc., will be prepared and maintained with a degree of accuracy and consistency that will promote efficiency and reflect credit on the Department.

Background

The Attorney General Support Unit will assemble information, prepare maps, deeds, and all other instruments necessary for acquisition of property for highway right-of-way. This Section will disseminate information and instruments to interested Department Units to expedite the acquisition of rights-of-way, and will organize and maintain maps, deeds, correspondence, and all other records pertaining to condemnation actions. This Section will maintain continuing liaison with Department Units, the Attorney General's Office, and with local State and Federal Agencies having an interest in, or whose actions may affect, highway rights-of-way.

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Procedures

Preparation and Processing of Right-of-Way Condemnation Instruments, Maps, and Exhibits

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Responsibility: Right-of-Way Acquisition Supervisor

Actions

1. Determines that if it is impossible to make an amicable settlement by contract with a property owner for condemnation action.
2. Notifies Right-of-Way Engineer that negotiations have ended; certifies that negotiations have ended; certifies that condemnation is necessary to acquire property; requests that condemnation proceedings be initiated; and indicates 100% of appraisal amount to be deposited with the court.

Responsibility: Region Right-of-Way Engineer

3. Notifies Engineer for Preconstruction of request for condemnation. Requests Preconstruction staff review.

Responsibility: Preconstruction Engineer

4. Orders staff review to assemble information to show that requirements indicated on the right-of-way map are adequate to satisfy needs of (a) Roadway Design; (b) Hydraulics; (c) Traffic; (d) Materials; (e) Construction; (f) Maintenance.
5. Verifies that field survey has been completed.

Responsibility: Region Right-of-Way

6. Verifies that field survey has been completed.

Responsibility: Roadway Design Support Engineer

7. Notifies Right-of-Way Engineer that: (a) All design is finalized; (b) Design is finalized; (c) No changes in design are expected; (d) Approval on all construction and design features has been received; (e) If there are exceptions, he explains such exceptions.

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Responsibility: Attorney General Support Unit

8. Obtains all current evidence of title and parties in interest for parcels to be condemned.
9. Compiles all information relative to a condemned parcel, such as design features, construction details, maintenance element, and topography. (All topography is included as of the date of the appraisal).
10. Prepares condemnation resolution papers and maps. Refers to the Right-of-Way Instruments Manual for information as to specific type of resolution to be prepared and method of preparation. (See Note 1 on Page 5).
11. Lists access openings to be granted by Engineer's Centerline Station, right or left, and size of opening, or, notes the fact that no openings will be granted. (This information must become a part of the condemnation resolution.)
12. Assembles condemnation papers and maps for transmittal to the Chief, Right-of-Way.
13. Transmits condemnation resolution to the Chief, Right-of-Way by memorandum for necessary approval.

Responsibility: Chief, Right-of-Way

14. Block stamps memorandum and obtains approval signature of Deputy Director; certifies and records condemnation and returns both memorandum and certified copy of condemnation resolution to the Attorney General Support Unit.

Responsibility: Attorney General Support

15. Enters in record and transmits condemnation file according to approved distribution list (Deputy Attorney General, Defendants, Right-of-Way Acquisition, District Engineer and Project Engineer). (See Note 2 on Page 5).

Responsibility: Chief, Right-of-Way

16. Prepares voucher for 100% of appraisal amount and forwards to Attorney General.

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Responsibility: Attorney General

17. Obtains court order granting immediate occupancy and deposits 100% of appraisal amount with court. Notifies Chief, Right-of-Way of court order.

Responsibility: Attorney General Support Unit

18. Mails Order of Immediate Occupancy to Recorder for recording. Receives and files recorded instrument and distributes copies to District Engineer and Project Engineer.

Responsibility: Attorney General

19. Requests trial map and court exhibit from Attorney General Support.

Responsibility: Attorney General Support Unit

20. Prepares exhibits and maps, enters information in trial map file and forwards to Attorney General. (Exhibit map will be made only for up-to-date, recorded Ownership Record.)
21. Transmits trial map, photos, and other pertinent information to Assistant Attorney General.
22. Receives stipulations (if any) and enters them into project record. Informs affected units of details of stipulations. (Affected units may include Project Design Engineers, and Regions). (See Note 3 on Page 5.)

Responsibility: Attorney General

23. Transmits Final Order of Condemnation to the Chief, Right-of-Way.

Responsibility: Chief, Right-of-Way

24. Prepares documentation and makes final payment for property.

Responsibility: Attorney General Support Unit

25. Checks Final Order of Condemnation against resolution, prepared deed forms, and right-of-way maps.
26. Mails Final Order of Condemnation to County Recorder for recording.

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27. Receives recorded order from County Recorder; indexes and files order; and distributes copy to Region (See Note 4 on Page 5).

Note 1: A separate resolution must be prepared for every property owner, or owners, if more than one person has an interest in same tract. More than one parcel may be listed on a resolution, providing they are under the same ownership.

Note 2: When condemnation notice has been served, no changes in design, construction features, or in Right-of-Way taking will be made unless such changes are vital to the Department and have the approval of the Deputy Director. Changes in the interest of the property owner are permissible only if they can be made without lowering highway standards and will result in settlement by contract rather than by condemnation. When it is necessary and in the best interest of the Department to change a right-of-way parcel after it has been entered into Condemnation, an Amended Condemnation Resolution will be prepared at the direction of the Right-of-Way Engineer, with the proper approval, under the procedure as outlined above. The Amended Resolution will state the nature of the revision and will reflect any change in the amount of the appraisal.

Note 3: Stipulated judgements will not be entered into unless stipulations are first agreed to by the Deputy Director or his representative. All stipulations will be forwarded to the Attorney General Support Unit so that: 1) the Attorney General Support Unit can keep maps and records current; and 2) all interested sections and divisions can be notified. Stipulations approved by the Deputy Director will be made a part of the Final Order of Condemnation to assure that they will be acted upon and property rights protected.

Note 4: In the event it becomes necessary to dismiss an action after an Order of Immediate Occupancy has been granted, it will in all cases be done by contract with the property owner or a Final Order of Condemnation processed through the Court. (We go through the same process to dismiss an action as we do to initiate one.) Where an action is dismissed, the property owner is entitled to just compensation for damages accrued during the period of occupancy, including attorney fees, etc. (It may be as expensive to dismiss as to condemn.) Extreme caution must be exercised that no action is started that may need to be amended or dismissed.